

Land and Other Legislation Amendment Bill 2022

Explanatory Notes

FOR

Amendments during consideration in detail to be moved by the Honourable Scott Stewart MP

Title of the Bill

Land and Other Legislation Amendment Bill 2022.

Objectives of the Amendments

The Land and Other Legislation Amendment Bill 2022 (the Bill) includes amendments to the *Stock Route Management Act 2002* (the Stock Route Management Act), *Vegetation Management Act 1999* (the Vegetation Management Act), and the *Mineral Resources Act 1989* (Mineral Resources Act). The objectives of the proposed amendments to the Bill are to:

- 1) address a minor error relating to the commencement of a Vegetation Management Act and a Stock Route Management Act provision;
- 2) amend the Mineral Resources Act to broaden the operation of the rent deferral provisions for specific critical mineral mining leases that commenced on 21 November 2022; and
- 3) re-establish a level of parliamentary oversight in relation to the identification of regional ecosystems and their class under the Vegetation Management Act.

Specifically, clause 2 lists the provisions to commence on a day fixed by proclamation. Amendment is required to clause 2 to ensure appropriate operation of provisions.

Clause 2(e) references clause 97 as a provision to commence on a day to be fixed by proclamation. Clause 97 is proposed to be omitted from the Bill and is no longer required to be reference in clause 2(e). The Vegetation Management Act definition information contained within clause 97 will instead be inserted into clause 107. See amendment 11 that amends clause 107.

Clause 2(f) relates to the commencement of a provision amending to the Stock Route Management Act. A technical processing error occurred during the supply of the Bill which resulted in the number 4 being inadvertently omitted from the end of clause 2 (f).

This number provides a reference to the corresponding Stock Route Management Act amendment in schedule 1 of the Bill, which is required to commence on proclamation due to

its interconnectedness with another Stock Route Management Act provision commencing by proclamation. If the error in clause 2(f) is left uncorrected, the reference amendment will occur out of sequence and make the relevant provision inoperable until the correlating provision is given effect by proclamation.

The long title of the Bill is amended to insert the *Mineral Resources Act 1989* as new Part 6B inserts amendments to the Mineral Resources Act into the Bill. Specifically, clauses 49A and 49B broaden the operation of the existing rent deferral framework for critical mineral mining leases under the Mineral Resources Act to ensure that the value of a rent deferral is equivalent to a minimum of 12 months from the commencement of the mining lease.

Clauses 49A and 49B furthers the intent of the existing critical minerals rent deferral framework by enabling eligible mining lease holders to release capital by redirecting the deferred initial rent into their project during its infancy to improve its chance of success. The amendments are consistent with the Queensland Government's commitment to support the emerging critical mineral sector and ensure that eligible participants receive the maximum benefit possible from the rent deferral framework.

Clauses 49C and 49D ensure that a transitional provision applies so that the improved rent deferral framework applies to all eligible critical mineral mining leases granted on or after 21 November 2022.

The Bill includes provisions relating to the Vegetation Management Act that seek to alter the mechanism by which regulated regional ecosystems and their class are identified.

Presently regional ecosystems and their class are identified in schedules in the Vegetation Management Regulation 2012 (the Vegetation Management Regulation). The Bill provided for these regional ecosystems to instead be identified in a database, the Vegetation Management Regional Ecosystem Description Database (VM REDD), certified by the chief executive of the Vegetation Management Act.

Submissions made during the Transport and Resources Committee Inquiry into the Bill raised concerns that the proposal to identify regional ecosystems in a certified database would reduce transparency and rigour by removing Parliamentary oversight that is part of the existing regulation amendment process. In its tabled report (no. 16, 57th Parliament), the Committee recommended the amendment in the Bill be revisited.

Amendments to clause 101 and resulting minor consequential amendments in the Bill address the concerns raised during the Committee process. These amendments will ensure Parliamentary oversight and scrutiny is maintained, whilst still achieving the original policy intent by providing greater clarity and ease of reference for landholders, reducing the risk of errors, and affording operational efficiencies for government.

Achievement of the Objectives

Correcting the technical error in clause 2 (e) and (f) of the Bill relating to the commencement of a Vegetation Management Act and a Stock Route Management Act provision will enable the Bill amendments to operate as intended.

The objective of broadening the operation of the rent deferral provisions within the Mineral Resources Act is achieved by providing all eligible critical minerals mining lease applicants with the benefit of a rent deferral that is equivalent to the value of a minimum of 12 months' rent. This will provide support to the emerging critical minerals industry by enabling eligible

applicants to redirect the deferred initial rent into their project to improve its chances of success.

The objective of the amendments to clause 101 and the associated minor consequential amendments will be achieved as these changes require that the database certified by the Chief Executive of the Vegetation Management Act be tabled in the Legislative Assembly within 14 sitting days of certification, otherwise it has no effect. The certified database is to commence upon tabling or a later date as provided in the certified database. Tabling will provide parliamentary oversight and scrutiny for updates to the regional ecosystem descriptions and their class.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives. The policy objectives can only be achieved by legislative amendment.

Estimated Cost for Government Implementation

There are no implementation costs associated with the amendments.

Consistency with Fundamental Legislative Principles

The amendments in the Bill relating to clause 49D are consistent with the fundamental legislative principles (FLP), under section 4(3)(g) of the *Legislative Standards Act 1992* as it relates to retrospectivity. This amendment ensures the applicant of any eligible mining leases granted before the proposed changes take effect would still be able to realise the full benefit of the improved rent deferral framework.

The amendments to the Bill in relation to clause 101 and the associated minor consequential amendments are consistent with FLPs, particularly in terms of ensuring sufficient regard to the institution of Parliament is given. While regional ecosystems will no longer be identified and classified in the Vegetation Management Regulation, the amendment to the Bill allows for continued Parliamentary oversight and scrutiny of the certified database by providing for a tabling process in the Legislative Assembly, where it can be subject to disallowance.

The scientific criteria used to identify the appropriate classification for regional ecosystems will continue to be specified in the Vegetation Management Act, and certification of the database will only occur where the Minister is satisfied the regional ecosystems have been assigned the correct class outlined in the Vegetation Management Act.

The database will be certified annually by the Chief Executive under the Vegetation Management Act and will be made publicly available on the Department of Resources website. The certified database will be required to be tabled in the Legislative Assembly within 14 sitting days after certification otherwise it has no effect.

Consultation

The Environmental Defenders Office, the Wilderness Society and AgForce in submissions to the Transport and Resources Committee inquiry outlined concerns with proposed amendments to the Vegetation Management Act to certify the regulation of regional ecosystems and their class rather than this be included in the Vegetation Management Regulation. The proposed amendments to the Bill align with submissions provided to the committee and consultation has occurred with these submitters.

Consultation with the Association of Mining and Exploration Companies (AMEC) and the Queensland Resources Council (QRC) occurred in late-2022 at the time the existing rent deferral framework was introduced. They were supportive of the framework. The amendments improve the existing rent deferral framework by broadening its operation so that eligible participants would receive a greater benefit than they could currently receive under the existing framework. The transitional provisions also ensure that if any eligible mining leases are granted before the proposed changes take effect, these applicants would still be able to take advantage of the improved rent deferral framework.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 of the Bill to ensure appropriate operation of provisions. Clause 2 lists the provisions to commence on day fixed by proclamation.

Amendment 1 amends clause 2 to remove reference to clause 97 under subsection (e). Clause 97 included a sectional definition for “regional ecosystem number”. This sectional definition is no longer required as further amendment to the Bill (refer amendment 11) moves the definition of “regional ecosystem number” to the Schedule (Dictionary). Amendment 11, which changes clause 107, is to commence on a date set by proclamation which is correctly reflected in clause 2 of the Bill.

Amendment 1 also addresses a technical processing error that occurred during supply which resulted in a single number being inadvertently omitted under clause 2 (f).

Clause 2 (f) should read “schedule 1, amendment of Stock Route Management Act 2002, amendment 4”, and instead reads as “schedule 1, amendment of Stock Route Management Act, amendment.”

There is a relationship between amendment 4 under schedule 1, which amends a section reference in section 120 of the Act, and clause 64 in the Bill. For appropriate operation of the provisions, both should commence on a day to be fixed by proclamation. As the Bill is currently drafted, when the Bill is given assent, section 120 in the Stock Route Management Act will be automatically updated and the current reference to section 122 (3) will change to section 122 (4) before the changes in clause 64 have come into effect. Consequently, the provisions to renew an agistment permit will refer to an application fee that is currently not in the regulation. To ensure correct operation, this amendment to clause 2 is necessary.

Amendment 2 inserts Part 6A of the Bill to amend the Mineral Resources Act. This insert requires an amendment to the long title of the Bill. Part 6A amends the Mineral Resources Act to ensure that all eligible critical mineral mining leases since commencement of the framework on 21 November 2022 will have the benefit of a rent deferral that is equivalent to the value of a minimum of 12 months' rent.

Clause 49B amends section 291 to replace the term ‘rental for first rental period’ in the heading of the section with ‘initial rent’.

Clause 49B(2) amends section 291(1)(b) and (c) and (2) to (4) to replace the term ‘first rent’ with ‘initial rent’.

Clause 49B(3) amends section 291(5) to replace ‘section 290(1) with ‘section 290(1), (3) and (5). This is because sections 290(1), (3) and ((5) do not apply to the critical minerals rent deferral provisions, because as rent is being deferred there is no need for the rent to be paid in advance.

Clause 49B(4) amends section 291(6) to remove the definitions for 'first rent' and 'first rental period'.

Clause 49B(5) amends section 291(6) to insert a new defined term 'initial rent'.

The effect of the definition of 'initial rent' is that it means rent payable for the 'first rental period' within the meaning of section 290(1) (meaning the period from the commencement of the term of the mining lease until the next 31 August) and the rental year (defined in schedule 2 of the Act to mean 'each 12-month period that starts on 1 September and ends on 31 August') that starts immediately after the end of the first rental period. This means that the length of the initial rental period will be one year plus the balance of the year from the commencement of the term of the lease to 31 August. This clause provides an example to clarify the definition.

The amendments slightly broaden the existing critical mineral rent deferral framework that commenced on 21 November 2022 to ensure that critical mineral mining leases can defer a minimum of 12 months' rent from the lease's commencement so that applicants can maximise the benefit of the rent deferral.

Clause 49C amends section 899 to include a note to direct the reader to new section 900.

Clause 49D inserts new section 900 to provide that section 291 as amended is taken to have always applied in relation to a mining lease that was granted on or after 21 November 2022 (the day that the *Coal Mining Safety and Health and Other Legislation Amendment Act 2022* amendments were given Assent).

New section 900 provides a transitional arrangement so that the amended critical minerals rent deferral framework will apply to any critical minerals mining leases granted after 21 November 2022 but before the amended framework takes effect. This ensures that all eligible critical mineral mining lease applicants will be able to take advantage of the improved rent deferral framework.

Amendment 3 omits clause 97 to remove the definition of "regional ecosystem number" as a sectional definition in section 20AK. This definition will instead be inserted in the Schedule (Dictionary) given the definition applies to multiple provisions. See amendment 11 that amends clause 107.

Amendment 4 inserts a new clause 100A that amends the heading for part 2, division 7A to omit the heading "Classes of regional ecosystems" and insert the heading "Regional ecosystems" to reflect the new and existing provisions under the division.

Amendment 5 omits clause 101 which inserted new s22L to provide the new certified database provisions.

Amendment 6 inserts a new sub-division heading for part 2, division 7A, being: subdivision 1 "Vegetation Management Regional Ecosystem Description Database (VM REDD)" which provides for the new certified database provisions in a way that provides for continued Parliamentary oversight and scrutiny of the certified database. Amendment 6 also reinserts clause 101 to insert new sections 22I to 22L.

The new section 22I provides a definition for the new certified database, the Vegetation Management Regional Ecosystem Description Database (VM REDD), that has effect under the subdivision. The definition provides that the database is the database that has effect under this subdivision of the Act.

The new section 22J provides that the chief executive may certify a database about regional ecosystems as the VM REDD, and that the database can be certified by way of certifying a hard copy of the database or a digital electronic form of the database.

Subsection 22J(3) provides that where the chief executive certifies the database in digital electronic form, a reference in the subdivision to the database is taken to be a reference to a hard copy of the database.

To ensure the technical and scientific nature of the certification process continues to be determined against the technical criteria in the Act, subsection 22J(4) requires the chief executive to, before certifying a database under subsection 22J(1):

- a) ensure that the numbers, descriptions and vegetation management classes of the regional ecosystems reflect the Queensland Herbarium's Regional Ecosystem Description Database; and
- b) ensure the VM REDD would comply with sections 22LA(2), 22LB(2) and 22LC(2) of the Act.

Consistent with the original certification provisions in clause 101, subsection 22J(5) ensures failure to comply with subsection 22J(4) does not affect the validity of the certification.

New section 22K provides that the VM REDD must be tabled in the Legislative Assembly within 14 sitting days from certification, and that the certified database takes effect upon tabling or on a later date as stated in the VM REDD. Subsection 22K(4) provides that the disallowance provisions under section 50 of the *Statutory Instruments Act 1992* applies as if the VM REDD was subordinate legislation.

This is consistent with the government's response to the Parliamentary Committee to ensure the VM REDD is tabled before it takes effect and is subject to disallowance procedures to ensure Parliamentary oversight is maintained for the identification and classification of regional ecosystems under the Act. If the VM REDD is not tabled within the 14 sitting days from certification, the certified database will have no effect and the previous version of the VM REDD will continue in effect. Subsections 22J(5) and (6) insert saving provisions should the VM REDD ceases to have effect due to the VM REDD being disallowed, and in such an event, the previous version of VM REDD again takes effect as the VM REDD, and the cessation of the disallowed VM REDD does not affect anything done or suffered under the Act.

Consistent with the original database certification provisions in clause 101, each version of the VM REDD will be published on the department's website and will state the period for which the database is / was the VM REDD under the Act.

Amendment 6 also inserts after clause 101 a new clause 101A to insert a new sub-division heading for part 2, division 7A, being: subdivision 2 "Classes of regional ecosystems" that relate to the existing provisions for classifying regional ecosystems.

Amendment 7 amends clause 106 to amend the new part 6, division 15 heading to amend "provision" from singular to plural to reflect the division includes more than one transitional provision.

Amendment 8 amends clause 106 to amend the heading for the new section 149 by inserting "Queensland Herbarium" before "Regional Ecosystem Description Database" to clarify the Regional Ecosystem Description Database (REDD) is a database owned and published by the Queensland Herbarium. This clarification was included to ensure a clear

distinction between the Queensland Herbarium’s REDD and the VM REDD, being two separate databases.

Amendment 9 also amends clause 106 to amend the new section 149 by inserting “Queensland Herbarium” before “Regional Ecosystem Description Database” to clarify the Regional Ecosystem Description Database (REDD) is a database owned and published by the Queensland Herbarium.

Amendment 10 amends clause 106 to include a new transitional provision, section 150. This transitional provision applies until the first ever VM REDD certified under the Act takes effect. It also applies in the event the first ever VM REDD certified under the Act stops having effect. It provides that in such an event, certain provisions in the Act in force immediately prior to the commencement apply as if part 11 of the *Land and Other Legislation Amendment Act 2022* had not been enacted. These provisions give effect to the previous classification of regional ecosystems in the *Vegetation Management Regulation*. As a result, the previous classification remains in force until the first time a VM REDD certified under the Act takes effect.

Amendment 11 amends clause 107 to amend the following definitions in the Schedule (Dictionary) by:

- amending the definition of “Regional Ecosystem Description Database” to be “Queensland Herbarium Regional Ecosystem Description Database” to ensure a clear distinction between the Queensland Herbarium’s REDD and the VM REDD, being two separate databases. This definition was also amended omit the incorrect reference to “conservation class” and insert the correct reference “class”;
- inserting the definition for “regional ecosystem number” that was previously included as a sectional definition in section 20AK under clause 97. See amendment 3 that omits clause 97;
- inserting a new definition for “Vegetation Management Regional Ecosystem Description Database” that refers to the new section 22I definition; and
- amending the definition “VM REDD” to update the section reference to the new section 22I definition for “Vegetation Management Regional Ecosystem Description Database”.

Amendment 12 inserts the *Mineral Resources Act 1989* in the long title of the Bill after the Land Title Act 1994.